

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No.: 3:00-CR-129
)	(VARLAN/SHIRLEY)
MICHAEL A. ROBINSON,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This criminal action is before the Court on Defendant Michael A. Robinson's ("Defendant") request for relief pursuant to Fed. R. App. P. 10(e)(1). [See Doc. 305.] Defendant contends that there was a misstatement on the record when the Court found that the jury verdict form was "answered in the affirmative." Thus, he asks the Court to "correct its misstatement in its opinion that pertains to portion 1(b) and 1(c) being 'answered in the affirmative.'" [Doc. 305 at 4.] In other words, Defendant requests that the Court correct or modify the order [Doc. 302], which Defendant has appealed to the Court of Appeals. [See Doc. 303.]

Fed. R. App. P. 10(e)(1) provides:

If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

According to Fed. R. App. P. 10(a), the "record on appeal" consists of "(1) the original papers and exhibits filed in the district court; (2) the transcript of proceedings, if any; and (3)

a certified copy of the docket entries prepared by the district clerk.” The Sixth Circuit has viewed “the composition of the record on appeal . . . [as] the record and facts considered by the District Court.” *United States v. Barrow*, 118 F.3d 482, 487 (6th Cir. 1997).

In light of *Barrow*, the Court doubts whether the Defendant’s perceived “misstatement or omission” in the order under appeal [Doc. 302] falls within the scope of Fed. R. App. P. 10(e)(1). It would be impossible for the Court’s order to be “considered by the District Court” in deciding the same order. Furthermore, Defendant essentially questions the Court’s interpretation of the verdict form [Doc. 289-2] that is part of the record as “an exhibit filed in the district court.” Fed. R. App. P. 10(a)(1). To the extent Defendant disagrees with the Court’s interpretation of the verdict form, that issue is left for the Court of Appeals’ consideration of Defendant’s appeal of the Court’s order entered on August 26, 2008. [*See* Docs. 302, 303.]

Accordingly, Defendant’s motion [Doc. 305] is hereby **DENIED**.

IT IS SO ORDERED.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE